

STATE OF MICHIGAN
COURT OF APPEALS

EARL'S SPRAY SERVICE, INC.,

Petitioner-Appellee,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

UNPUBLISHED

May 24, 2007

No. 273843

Tax Tribunal

LC No. 00-308804

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from a Michigan Tax Tribunal ("MTT") order denying its motion for summary disposition and granting summary disposition for petitioner pursuant to MCR 2.116(C)(10) in this tax dispute. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

At issue in this case is whether petitioner is entitled to a refund of motor fuel taxes paid under the Motor Fuel Tax Act ("MFTA"), MCL 207.1001 *et seq.* Respondent argues that the MTT erred by denying its motion for summary disposition under MCR 2.116(C)(8) and (C)(10) and granting summary disposition for petitioner under MCR 2.116(C)(10).

We review de novo a decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Willis v Deerfield Twp*, 257 Mich App 541, 548; 669 NW2d 279 (2003). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone. *Johnson-McIntosh v Detroit*, 266 Mich App 318, 322; 701 NW2d 179 (2005). A motion under subrule (C)(8) is properly granted if no factual development could justify recovery under the plaintiff's claim. *Id.* A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the nonmoving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31.

Further, we review a decision of the MTT to determine whether the tribunal legally erred or adopted an incorrect legal principle. *Meadowbrook Village Assoc v City of Auburn Hills*, 226 Mich App 594, 596; 574 NW2d 924 (1997). Although statutory interpretation is a question of law which this Court reviews de novo, we generally defer to the MTT's interpretations of

statutes that it administers and enforces. *DaimlerChrysler Corp v Dep't of Treasury*, 268 Mich App 528, 534; 708 NW2d 461 (2005).

When interpreting statutory language, courts must ascertain the legislative intent that may reasonably be inferred from the words in a statute. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). When the Legislature has unambiguously conveyed its intent, the statute speaks for itself and judicial construction is neither necessary nor permitted. *Id.* Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute. *Id.* Undefined words should be accorded their plain and ordinary meanings, and dictionary definitions may be consulted in such situations. *Id.* Statutes that appear to conflict should be read together and any inconsistencies reconciled, if possible. *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 416; 590 NW2d 293 (1999); *People v Budnick*, 197 Mich App 21; 494 NW2d 778 (1992).

Respondent presents several arguments in support of its positions, but all rest upon the premise that petitioner's use of diesel fuel for aviation purposes was prohibited. Respondent contends that petitioner is not an "end user" under MCL 207.1039 because petitioner violated MCL 207.1094(4) by using diesel fuel for aviation purposes. MCL 207.1039 provides:

An end user may seek a refund for tax paid under this act on motor fuel or leaded racing fuel used in an implement of husbandry or otherwise used for a nonhighway purpose not otherwise expressly exempted under this act. However, a person shall not seek and is not eligible for a refund for tax paid on gasoline or leaded racing fuel used in a snowmobile, off-road vehicle, or vessel as defined in the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

In addition, MCL 207.1094(4) provides that "[a] person shall not sell, use, or label for aviation purposes motor fuel identified on a shipping paper or invoice as diesel fuel." A person who knowingly violates MCL 207.1094 is guilty of a felony. MCL 207.1094(5).

In *DaimlerChrysler Corp, supra* at 536, this Court defined the term "end user" as used in MCL 207.1033 and MCL 207.1039. This Court stated:

The term "end user" is not defined in the MFTA, but is defined by a dictionary as "the ultimate user for whom a machine, [such] as a computer, or product, [such] as a computer program, is designed." *The Random House Dictionary of the English Language: Second Edition Unabridged*. Shedding additional light on the meaning of "end user," is MCL 207.1026, which equates "used or consumed" with "producing or generating power for propelling the motor vehicle." Accordingly, we hold that, for the purposes of §§ 33 and 39 of the MFTA, an end user of motor fuel is the ultimate user of the motor fuel, i.e., the party who uses the fuel to power the motor vehicle into which the fuel was placed. [Brackets in original.]

In accordance with this definition, petitioner was an end user of the fuel purchased within the meaning of MCL 207.1039. Petitioner admitted purchasing diesel fuel which it used in its

aircraft employed in its crop dusting business. Therefore, petitioner was the ultimate user of the fuel.

Respondent argues that because petitioner violated MCL 207.1094(4) and used the fuel in a manner not intended by the Legislature, it is inconsistent to allow petitioner to be considered an “end user,” entitling it to a tax refund. Nothing in the statutory language supports respondent’s argument. MCL 207.1039 makes no mention of MCL 207.1094(4), and vice versa. Had it chosen to do so, the Legislature could have provided that taxes paid on diesel fuel used for aviation purposes, contrary to MCL 207.1094(4), are not eligible for a tax refund. In fact, the Legislature exempted from refund eligibility “tax paid on gasoline or leaded racing fuel used in a snowmobile, off-road vehicle, or vessel as defined in the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.” Applying the same exemption regarding a violation of MCL 207.1094(4) would amount to the improper statutory construction of plain and unambiguous statutory language. *Koontz, supra* at 312.

As the MTT recognized, MCL 207.1094(4) does not speak to the issue of tax refunds. Rather, tax refunds are dealt with in MCL 207.1032, which states:

If a person pays the tax imposed by this act and uses the motor fuel for a nontaxable purpose as described in sections 33 to 47, the person may seek a refund of the tax. To obtain a refund, the person shall comply with the requirements set forth in section 48.

Petitioner paid the tax of \$.15 for each gallon of fuel purchased pursuant to MCL 207.1008(1)(b) and complied with the requirements of § 48, or MCL 207.1048. Notably, MCL 207.1048 does not contain a requirement that a person seeking a tax refund must have complied with MCL 207.1094(4).

Respondent incorrectly contends that, in enacting MCL 207.1094(4), the Legislature prohibited the use of diesel fuel for aviation purposes. Rather, that provision states that “[a] person shall not sell, use, or label for aviation purposes motor fuel *identified on a shipping paper or invoice as diesel fuel.*” (Emphasis added.) Thus, if diesel fuel is identified on a shipping paper or invoice as aviation fuel, such use would not offend MCL 207.1094(4). This interpretation is consistent with MCL 207.1002(p), which acknowledges that diesel fuel may be used for aviation purposes. That provision defines “diesel fuel” as

any liquid other than gasoline that is capable of use as a fuel or a component of a fuel in a motor vehicle that is propelled by a diesel-powered engine or in a diesel-powered train. Diesel fuel includes number 1 and number 2 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. *Diesel fuel also includes any blendstock or additive that is sold for blending with diesel fuel, any liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a diesel-powered engine, airplane, or marine vessel.* An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for diesel fuel. Diesel fuel does not include an excluded liquid. [Emphasis added.]

Therefore, because MCL 207.1002(p) explicitly contemplates the use of diesel fuel in an airplane, MCL 207.1094(4) cannot be read as prohibiting the use of diesel fuel for aviation purposes as respondent contends. The Tax Tribunal did not err in concluding that the Legislature enacted MCL 207.1094(4) to insure that either the aircraft fuel privilege tax or the motor fuel tax is paid, and not to prohibit the use of diesel fuel for aviation purposes.

Affirmed.

/s/ Helene N. White

/s/ Henry William Saad

/s/ Christopher M. Murray